IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 206 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAH VADODARIA INDUSTRIAL ESTATE PVT. LTD. - Petitioner(s)
Versus
PLANET INTERNATIONAL TRADES LTD. - Respondent(s)

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Appearance :

MRS SANGEETA N PAHWA for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/01/2007

ORAL JUDGMENT

Present Company Petition has been filed for an appropriate order of winding up of

respondent company, i.e., Planet International Trades Ltd., under the provisions of the Companies Act, 1956, more particularly Sections 433 and 434 of the Act.

2. It is the case on behalf of the petitioner that the petitioner advanced a loan of Rs. 28 lakhs in favour of the respondent company with a clear understanding that the same should be repaid/refunded by 23rd July 2005. It is the case on behalf of the petitioner that inspite of repeated demands written as well as oral the respondent company neglected to pay the said amount and therefore the petitioner company was constrained to serve statutory notice as required under Section 433 and 434 of the Companies Act calling upon the respondent Company to make the said payment and accordingly by notice dated 5th October 2006 the respondent company was called upon to make payment within the stipulated time as required under the provisions of the Companies Act, 1956. It is submitted that inspite of the

statutory notice having served upon the respondent company neither the amount due and payable by the petitioner is paid nor there was any reply to the statutory notice. It is submitted that the respondent company has neglected to pay the amount due and payable to the petitioner; it is not in position to pay the dues to its creditors inclusive of the petitioner; that the respondent company has lost its financial substratum and is not in a position to revive; and therefore it is requested to allow the present company petition and to pass appropriate order of winding up of respondent company.

3. This Court initially issued notice upon the respondent company vide order dated 7.11.2006 making it returnable on 4th December 2006. Though served nobody appeared on behalf of the respondent company. Accordingly this Court admitted the present Company Petition on 4th December 2006 and it was directed to give

advertisements in 2 local newspapers, i.e., 'The Indian Express' [English] and 'Sandesh' [Gujarati], both Ahmedabad editions with regard to admission and date of final hearing of the present Company Petition on 23rd January 2007. An affidavit has been filed on behalf of the petitioner company dated 25th December 2006 confirming that the advertisements as ordered earlier have been published in 2 local newspapers on 22nd December 2006. Inspite of the above, there is no representation on behalf of the respondent Company. This Court has also not received any objection/s against granting of relief in the Company Petition.

4. As stated above, the respondent company was served with the statutory notice dated 5th October 2006 and was called upon to make the payment of Rs. 28 lakhs with interest accrued thereon, and inspite of service of the said statutory notice the respondent company neither replied to the same nor has made any payment.

Even there is no reply to the present Company Petition. Though served nobody appears on behalf of the respondent company. The averments made in the present Company Petition are not disputed. Thus, it appears that the respondent company has lost its financial substratum and it is not in a position to pay its dues to the creditors inclusive of the petitioner and thus neglected to pay the dues of the petitioner. It is even not the case of the respondent Company that the respondent Company is a running company and is able to make payments to its creditors. Under the circumstances, the company is ordered to be wound up.

5. For the reasons as stated above, the petition is allowed. The respondent company is directed to be wound up. The Official Liquidator attached with this Court is appointed as 'Official Liquidator' for the respondent company. The Official Liquidator is hereby directed to take possession of the properties (movable or

immovable) of the respondent company along with its Bank Accounts, Cheque Books, Cash, Account Books etc., after preparing the inventories and panchnama. The Official Liquidator shall submit his report within a period of three months. If required, he can take service of the Official Valuer for the purpose of preparation of possession note etc. No costs.

[M.R. Shah, J.]

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